

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1736 of 1998

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BOMBAY GARAGE

Versus

KIRITBHAI U KAVISHWAR

Appearance:

MR KM SHETH for Petitioner

MR BG JANI for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 06/04/99

ORAL JUDGEMENT

1. This is a revision professed to be under section 29, subsection (2) of the Bombay Rent Act (the Act for short) at the instance of original defendant-tenant. The order challenged in the present revision is an interim order passed on the plaintiffs' application under section 11, subsection (4) of the Act.

2. It is common ground that when the plaintiffs filed an application for interim orders under section 11,

subsection (4), the Rent Court passed an order thereon, with which the defendant-tenant was aggrieved. It is common ground on both sides that the said order is not appealable on account of the specific statutory provision viz. section 11, subsection (5) of the Act.

3. The next question which would arise is that if an appeal does not lie from the impugned order, what is the remedy of the defendant. A clear answer is provided by section 29, subsection (3) of the Act. The said subsection specifically provides that where no appeal lies under section 29 from a decree or order in any suit or proceeding under the Rent Act, the District Court may "call for the case in which such decree or order was made and pass such order with respect thereto as he thinks fit". Obviously this is a revisional power conferred on the District Court by subsection (3), in case where the impugned order is not appealable under section 29 of the Act.

4. It is equally obvious that the petitioner in approaching the High Court directly under section 29, subsection (2) has also committed an error. No doubt, subsection (2) of section 29 confers revisional power upon the High Court, but the same can be exercised only against a decision rendered in an appeal decided under section 29, subsection (1) of the Act. The revisional power of the High Court under subsection (2) does not take the place of and does not substitute for the revisional power of the appropriate court where a revision would lie under subsection (3) of section 29 of the Act.

5. It is, therefore, obvious that the petitioner has been pursuing a remedy in the wrong forum. No doubt a revision would lie, but it would not be under section 29(2), but under 29(3) and it would lie not in the High Court, but it would lie in the District Court.

6. It is stated in the memo of revision and particularly paragraph 10 that the District Court has already refused to accept the revision application, on the grounds submitted in the said paragraph. We are for the present not concerned with whether such grounds are legitimate or otherwise. The question is that the refusal to accept the revision i.e. a refusal to register revision cannot be by oral or administrative directions without a written order.

7. Thus, on the facts and circumstances of the case, the petitioner is directed to present the memo of

revision in respect of the impugned order to the District Court, and District Court shall register the same as a revision under section 29(3) of the Bombay Rent Act. The District Court shall then deal with the same on merits and in accordance with law including the question of maintainability on the ground of pecuniary jurisdiction if the same should arise.

8. This revision is accordingly disposed of with no order as to costs.

9. At the request of learned counsel for the petitioner and on the facts and circumstances of the case, the impugned order shall not be implemented upto 13th April 1999. It is clarified that the suit is not stayed. Direct service is permitted.
